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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,353	07/22/2003	Sascha Baumcister	DE920020019US1	7584
30206	7590	10/15/2007	EXAMINER	
IBM CORPORATION			CHRISTENSEN, SCOTT B	
ROCHESTER IP LAW DEPT. 917			ART UNIT	PAPER NUMBER
3605 HIGHWAY 52 NORTH			2144	
ROCHESTER, MN 55901-7829				
MAIL DATE		DELIVERY MODE		
10/15/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/624,353	BAUMEISTER ET AL.
	Examiner Scott Christensen	Art Unit 2144

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 9/4/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.(See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

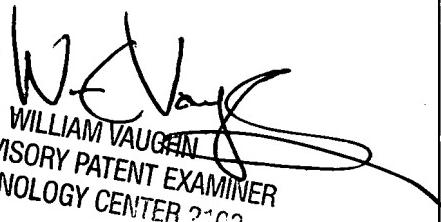
8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13.  Other: \_\_\_\_\_.

  
 WILLIAM VAAGEN  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 2107

## **ADVISORY ACTION**

1. This Advisory Action is in regards to the most recent papers filed on 8/8/2007.

### ***Response to Amendments***

2. The After-Final claim amendments submitted 9/24/2007 canceling claims 8-10 have been entered.

### ***Response to Arguments***

3. Applicant's arguments filed 9/24/2007 have been fully considered but they are not persuasive.

On page 8 of Applicant's remarks, Applicant argues that "claim 18 is directed to a method for streaming a media file by sequentially interacting with two different servers – the first being a metadata server and the second being a streaming server." However, it is noted that there is no explicit definition in the instant specification for the term "server." Therefore, "server" is being given the broadest reasonable interpretation from the perspective of a person of ordinary skill in the art in light of the specification, which is that a server is a hardware device or software that serves content or provides a service to another device. This interpretation is supported, for example, in claim 11, where the functions of the server are being performed by a computer-readable program. Therefore, there is no requirement that the media server and the streaming server be hardware servers, or even separate hardware servers. As a server in the instant claim also includes software, the software code that performs the functions of the metadata

server in Klemets constitutes a “metadata server,” and the portion that provides the media file constitutes a streaming server. Further, it is noted that separation of known components is not necessarily patentable distinction (See MPEP 2144.04 V C).

On pages 9-11 of Applicant’s remarks, Applicant argues that Klemets does not disclose that a request for a particular media file is intercepted or reinterpreted. However, it is noted that a “request for a particular media file” is not the same as a “request to stream a particular media file” or a “request to download a particular media file.” The claimed “request for a particular media file” appears to cover any request for [performing some action with regard to] a particular media file” (where the actions may include download, acquire, or stream, but may also include any other action, such as describe, initiate, etc.). The RTSP DESCRIBE request, as previously argued (See the Office Action mailed 8/3/2007, pages 7-8) initiates or begins the streaming media session. Thus, the RTSP DESCRIBE message is a request for [initiating] a particular media file. If applicant intends to for the “request for a particular media file” to be a specific kind of request, the instant claims should be amended to clearly disclose what kind of request is being transmitted.

On pages 12-13, Applicant argues that a person of ordinary skill in the art would have known how to perform the step of “checking predefined criteria determining whether or not a metafile is to be returned instead of the requested media file.” In response, the interpretation of the claim, and the logic for this assertion is presented

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below. However, if Applicant, in a subsequent response, continues to question this feature, with specific arguments against the interpretation and the logic presented in points A to E, below, Examiner will present a reference to show this functionality.

A. A metafile is returned in situations where the media file is to be streamed, with the metafile including the necessary information for the client to properly stream the file.

B. "Checking predefined filter criteria," as claimed, only requires that the server applies some sort of rules, policies, or other instructions to determine to perform the claimed functionality.

C. Requests to perform specific functionality is very well known in the art. For example, a request to connect, a request to stream, a request to download, a request to disconnect, etc.

D. Having a server apply some sort of rules, policies, or other instructions to determine what kind of request was presented is well known in the art. For example, a server will apply some rules, policies, or instructions to determine if it received a "request to connect," "a request to stream," "a request to download," "a request to disconnect," etc.

E. The instant claims do not specific disclose what kind of request is received. The claims do not even require the basis for which the determination is made (e.g. the file is not available for streaming, the client has a certain amount of bandwidth making downloading a better option, or the specific kind of request is for either streaming or downloading, etc.).

Therefore, the limitation added by claims 5 and 15 are met if a server is capable of checking incoming requests to determine if the request was a request for download or a request to stream.

Applicant should amend the instant claim to demonstrate what kind of criteria are utilized in order to make the determination if the criteria is not intended to include determining what kind of request was made by the client. Otherwise, Applicant has specific arguments that the above points are somehow erroneous, Examiner will provide a reference to support the conclusions.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571) 270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vaughn William can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*SBC*

  
WILLIAM VAUGHN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100